AGREEMENT FOR DISPOSITION OF LAND FOR PRIVATE DEVELOPMENT (A.D.L.)

by and among
the Redevelopment Agency of West Valley City,
a public entity,

West Valley City,
a municipal corporation of the state of Utah,

and

Jordan River Marketplace, LLC

REDEVELOPMENT AREA;
JORDAN RIVER REDEVELOPMENT AREA

JORDAN RIVER MARKETPLACE DEVELOPMENT

Dated as of _____

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AGREEMENT FOR DISPOSITION OF LAND FOR PRIVATE DEVELOPMENT (A.D.L.)

THIS AGREEMENT (this "**Agreement**") is entered into as of**_____, 2009**, by and between (i) the REDEVELOPMENT AGENCY OF WEST VALLEY CITY, a public body and governmental entity organized under the laws of the state of Utah (the "**State**"), exercising its functions and powers under the former Utah Neighborhood Development Act and Utah Redevelopment Agencies Act and the existing Limited Purpose Local Government Entities – Community Development and Renewal Agencies Act (the "**Act**") or any replacement act, including any successor public agency designated by or pursuant to applicable law (the "**Agency**"), (ii) WEST VALLEY CITY, a municipal corporation of the State (the "**City**"), and (iii) Jordan River Marketplace, LLC ("**Developer**"). (The Agency, the City and Developer are referred to in this Agreement collectively as the "**Parties**" and individually as a "**Party**.")

W I T N E S S E T H :

WHEREAS, in furtherance of the objectives of the Act, the Agency has undertaken a program for the development and redevelopment of certain areas in Salt Lake County, Utah (the "**County**") within the boundaries of the City, the Agency has established a redevelopment Area (the "**Project Area**") known as the "Jordan River Redevelopment Area" located within the City's boundaries; and

WHEREAS, the Agency has prepared, and the City Council, through the adoption of **Ordinance No. 00-11**, and **Resolution 00-02** has approved, a Redevelopment Area (the "**Project Area Plan**") providing for the development and redevelopment of the real property located in the Project Area and the future uses of such land, which Project Area Plan has been filed in the office of both the Recorder of the City and the Agency, and has been transmitted to the offices and agencies specified in State Law; and

WHEREAS, to enable the Agency to achieve the objectives of the Project Area Plan, the Agency desires to enter into this Agreement; and

WHEREAS, Developer desires to acquire certain land situated in the Project Area, which land is shown and described in Exhibit A-1 and Developer desires to develop all or a portion of certain land (the "**Site**"), located in the City and described on the attached Exhibit B-1, as a commercial mixed use development in accordance with all applicable laws and ordinances and this Agreement; and

WHEREAS, the Agency and the City believe that the redevelopment of the Site pursuant to this Agreement is in the vital and best interest of the Agency and the health, safety and welfare of the City and its residents, and in accord with the public purposes and provisions of the applicable State laws and requirements under which the Project Area Plan and its development are undertaken and are being assisted by the Agency; and

WHEREAS, the Agency and the City, on the basis of the foregoing, are willing to assist in the redevelopment of the Site for the purpose of accomplishing its development in accordance with the provisions of the Project Area Plan and this Agreement;

NOW, THEREFORE, for and in consideration of the mutual promises and performances set forth in this Agreement, the Parties agree as follows:

1. **Definitions.** As used in this Agreement, each of the following terms shall have the indicated meaning:

1.1. **"Design and Construction Process Guidelines"** means the Design and Construction Process Guidelines generally set forth in Exhibit C-1, which guidelines are to be supplemented upon the Parties accomplishment of final design guidelines and construction requirements.

1.2. "**Improvements**" means all building improvements not including basic infrastructure to be constructed by Developer on the Site regardless of phasing.

1.3. **"Initial Investment Value"** means the total amount spent by Developer for the actual construction, and installation of the Improvements on the Site through the date on which construction and installation of Improvements is complete and Developer commences full-scale leasing of the site including site preparation, grading, and site improvements but not including architectural, engineering or design related costs.

1.4. "**Payment Period**" means the period begining on January 1, 2010 and running consecutively through December 31, 2019, unless such deadline is extended at the sole discretion of the Agency.

1.5. **"Permitted Uses"** means uses limited to the uses permitted by the City code, zoning ordinances and regulations of the City in effect for the Site.

1.6. **"Project Area"** means the Jordan River Redevelopment Area as adopted by the City Council and the Redevelopment Agency.

1.7. **"Property"** means the property owned by the Redevelopment Agency to be purchased by the developer as set forth in Exhibits A-1 and B-1 and relevant portions of this Agreement.

1.8. "**Property Tax**" includes privilege tax and each levy on an ad valorem basis on tangible or intangible personal or real property, as set forth in Section 17C-1-102(36) or any successor or replacement provision of the Act.

1.9. "**Received Tax Increment**" means the Tax Increment from the Site, if any, actually received by the Agency for the calendar year concerned, pursuant to Section 17C-1-401 or any successor or replacement provision of the Act.

1.10. **"Site Plan"** means (a) initially, the preliminary Site Plan attached as Exhibit D-1; and (b) a final Site Plan consisting of one or more separate plans for each Improvement to be constructed or installed on the Site as may be approved by the City and the Agency showing the details of the actual development of the Improvements to be constructed or installed on the Site. The Final Site Plan(s) shall be added to the Agreement as an additional part of Exhibit D-1 when approved by the City and the Agency pursuant to Exhibit C-1. If for any reason a final Site Plan shall not be submitted by Developer or approved by the City the Preliminary Site Plan shall become the Final Site Plan at the discretion of the Agency and the City or the Property shall revert back to the Agency as provided in this Agreement.

1.11. "**Tax Increment**" means, excluding taxes levied and collected under Section 59-2-906.1 of the Utah Code Annotated, as amended, the difference between (a) the amount of Property Tax revenues generated each tax year by all taxing entities from the Site, using the then-current assessed value of the Site, and (b) the amount of Property Tax revenues that would be generated from the Site using the taxable value of the Site for 1999, as described in Section 17C-1-102(44) or any successor or replacement provision of the Act.

1.12. "**Tax Increment Subsidy**" means a portion of the tax increment from the Site, which portion the Agency may be required to pay to Developer under the terms of this Agreement, as more fully described in the Agency's Obligations and Undertakings. The Total of all Tax Increment Subsidy payments from the Agency to the Developer shall not exceed 4,639,500.00. The Tax Increment Subsidy shall be limited by and in accordance with any other terms of this Agreement and shall have a phased meaning that corresponds to the Phasing of the Project. The Tax Increment Subsidy is subject to downward adjustments or elimination pursuant to State Law or this Agreement. The Agency shall not be obligated to pay to Developer any tax increment whatsoever regarding the Site until the Agency has received and retained for its own purposes tax increment from the Site during the Tax Increment Subsidy Period.

2. **Conveyance of the Site.**

2.1. **Value.** Pursuant to the property appraisals attached hereto as Exhibit E-1 the value of the Property is hereby set at eleven dollard and eighty sever cents ($11.87) per square foot. In consideration of the condition of the site, the cost of development of the site and the desire of the City and the Agency to create a unique, high end cultural development on the site, the Agency has set the sale price of the Property at three dollars ($3.00) per square foot.

2.2. **Purchase Price and Conveyance.** In consideration of the Improvements to be constructed on the Property by Developer, and subject to all of the terms and conditions of this Agreement, the Agency hereby agrees to convey Phase I of the Property to Developer for the purpose of Developer constructing and leasing the Improvements. The Agency also agrees to enter into Option Agreements with the

Developer for Phase II and such Agreements are attached as Exhibit G-1. Phase I consists of 395,784 square feet and specifically includes all of Parcel Nos._____(need parcel numbers). The Purchase Price for Phase I shall be three dollars ($3.00) per square foot or one million six hundred eighty five thousand seven eighty one dollars ($1,187,352.00).

2.3. **Title.** The Agency shall convey title to the Phase I Property to the Developer by a Special Warranty Deed, warranting title against persons claiming by through or under the Agency, subject only to Permitted Encumbrances and the conditions, covenants and restrictions set forth in this Agreement.

2.4. **Due Diligence Period.** For a period commencing on the date hereof and ending on the date that is sixty (60) days thereafter (the "Due Diligence Period"), Developer shall have the right to inspect the Site and conduct such soils tests, environmental reviews, market studies and such other investigations as it shall determine reasonable. In the event that Developer shall decide that the construction or operation of the Improvements is not feasible for any reason, Developer may terminate this Agreement by written notice to the Agency no later than the end of the Due Diligence Period, in which event Developer shall have no further obligations hereunder. Developer shall indemnify the Agency, and defend and hold the Agency harmless from and against all damages and liabilities proximately caused by Developer's inspection and testing.

2.5. **Closing Detail.**

(A) The phase I Closing shall take place after the end of the Due Diligence Period and, after 30 days written notice to the Agency, on a date selected by the Developer after satisfaction of all conditions thereto specified herein have been satisfied.

(B) At closing:

(1) Possession of Phase I and risk of loss on Phase I shall pass to Developer.

(2) The Agency shall provide to Developer a standard ALTA owner's policy of title insurance in the amount of $1,187,352.00. Any special endorsement shall be obtained in Developers discretion and at Developer's expense.

(3) Taxes, if any, on the Site shall be prorated as of the date of Closing.

(4) Developer shall pay the cost of recording the deed. The Agency shall pay the cost of recording any other instruments that may be required in connection with closing in order for the Agency to deliver title.

(5) The Agency and Developer shall each pay one-half of the Title Company's customary closing fees.

(6) Each Party shall execute and deliver such additional closing statements, schedules and other documents as may be reasonably required to consummate the transactions contemplated by this Agreement.

2.6. **Condition of Site.**

(A) Phase I will be conveyed to Developer, and Developer shall accept title to Phase I, "as is," in its present state and condition without representation or liability on the part of the Agency or its representatives, except as otherwise specifically provided in this Agreement. The Agency's current administrator, Brent Garlick, has no actual notice of the existence of any environmental problems on the Site. Culinary water, sewer, natural gas, and telephone connections for industrial uses are available at or near the property lines of the Site. However, it is understood and agreed by the Agency and Developer that such utility connections and any special utility lines or connections required by the nature of the Improvements will be installed and connected at the sole expense of Developer. Also, Developer agrees that it will be responsible for any site preparation costs and expenses that may be necessary to prepare the Site for the construction and installation of the Improvements.

(B) The Agency and the Developer agree to work together to facilitate a resolution to any wetland issues that may be present on the Site, however, both parties agree that the portion of the Property known as Phase I is clear of jurisdictional wetlands.

(C) The City agrees to investigate the possibility of creating a special improvement district or special service area in order to assist the Developer in facilitating funding for infrastructure on the site. The potential creation of the special assessment area is at the sole discretion of the City Council and will be reviewed as determined by the City.

(D) The Agency agrees to work diligently in securing title to the Salt Lake County and State of Utah Properties on the Site in an effort to facilitate the development of Phases II and III.

(E) Phase III is currently zoned R-1-12. The Agency agrees to approach the City for a rezone of the property to an appropriate commercial zone for the area and the development.

3. **Tax Increment Subsidy, Conditions Precedent and Limitations.**

3.1. **Payment.** In consideration of Developer's agreement to construct and install Improvements with a minimum Initial Investment Value of at least **$8,000,000**, the Agency agrees to reimburse Developer for a portion of the costs of such Improvements by payment of the Tax Increment Subsidy in accordance with the terms of this Agreement and as further demonstrated in Exhibit F-1

Such payments of the Tax Increment Subsidy shall exclude the incremental repayment of the land being conveyed as set forth in Exhibit E-1 and shall be limited to the Tax Increment generated off of Phase I until such time as Phase II and III are purchased by the Developer,

3.2. **Conditions Precedent Described.** The following are conditions precedent (the "**Conditions Precedent**") to the Agency's obligation to pay any Tax Increment Subsidy to Developer:

(A) The Agency shall have recovered 100% of the full Purchase Price and closing costs of the Phase I Property through the Available Tax Increment less the "housing portion," prior to any Tax Increment Subsidy being paid to Developer.

Developer shall have obtained the building permit or permits from the City for construction of at least 24,000 square feet of Improvements within eighteen months (18) months of the effective date of this Agreement.

(B) Developer shall have constructed or caused to be constructed at least 24,000 square feet of the Improvements, in accordance with the terms of this Agreement and shall have received Certificate of Occupancy for the constructed Improvements.

(C) Developer shall have constructed the required Initial Investment Value of not less than eight million dollars ($8,000,000.00).

(D) Developer shall have paid all ad valorem taxes, and if applicable, interest and penalties, relating to the Site for such year.

(E) Developer shall not be in default or breach of any material term of this Agreement.

3.3. **Limitation on Payments.** The following additional provisions regarding limitations and reductions regarding Developer's entitlement to and eligibility to be paid or to receive the Tax Increment Subsidy shall govern and shall be applied in addition to any other term or provision of this Agreement.

(A) Developer shall only be paid the Tax Increment Subsidy from Available Tax Increment attributable to the Payment Period, which Available Tax Increment is paid to and actually received by the Agency. If, for any

reason, the Tax Increment anticipated to be received by the Agency is reduced, curtailed, or limited in any way by enactments, initiative referendum, judicial decree, or any other reason outside of the control of the Agency, the Agency shall have no obligation to pay the Tax Increment Subsidy to Developer from other sources or monies which the Agency has or might receive other than the Available Tax Increment actually received from the Site, and the Agency's obligation to pay the Tax Increment Subsidy to Developer shall likewise be reduced, curtailed, or limited.

(B) The Agency shall have no obligation to pay the Tax Increment Subsidy to Developer from other sources or monies which the Agency has or might hereafter receive from other portions of the Project Area, or Site or from sources other than from the Available Tax Increment monies which the Agency actually receives from the Site that are attributable to the Tax Increment Subsidy Payment Period.

(C) Subject to the limitations in this Agreement, the Tax Increment Subsidy shall be paid by the Agency to Developer only during the Tax Increment Subsidy Payment Period, conditional, however, upon Developer being eligible and entitled thereto under the provisions of this Agreement and Developer having met all of the Conditions Precedent. The Agency shall have no obligation to pay to Developer any Tax Increment Subsidy other than for the Tax Increment Subsidy Payment Period.

(D) For any Tax Increment Year of the Tax Increment Subsidy Payment Period that Developer is not eligible or entitled under this Agreement to receive all or a portion of the Tax Increment Subsidy, the amount that Developer is not eligible or entitled to receive for that Tax Increment Year shall be retained by the Agency, and the Agency shall have no obligation at any time to pay to Developer any amount of Tax Increment Subsidy in or relating to any Tax Increment Year that Developer is not eligible to receive the Tax Increment Subsidy or a portion thereof, and the Agency shall not be obligated to make-up or catch up for such missed payments at any time or from any source whatsoever.

(E) The City, the Agency and the Developer hereby recognize that the Development is meant to contain unique cultural architectural design, cultural icons, trails, public art and other items that will make the Development an outstanding cultural icon. In an effort to ensure that such items are included in the Development the Developer, the Agency and the City agree that the following process shall be followed when making a determination regarding payment for the types of items listed above.

(1) The Developer shall approach the Agency and the City regarding the cost of a particular item.

(2) The City and the Agency shall determine if the item is outside of the baseline development established and finalized by Exhibit C-1.

(3) If the City and the Agency determine that the item is outside the baseline development established by C-1, the City and Agency shall determine if the item is necessary or desirable in their sole discretion.

(4) If the City and the Agency determine that the item is desired, both entities shall review if the item will benefit the Developer or the Development or if the item is for the sole benefit of the City and the Agency. In the even the item would provide a benefit to the Developer or the Development then the cost of the item shall first be born by the tax increment generated by the property thereby reducing the amount of tax increment paid to the Developer. In the event the item clearly benefits all parties, the cost shall be born equally by all parties. In the event the benefit is determined to be solely to the City and the Agency, they shall bear the cost.

(5) In any event, the City and the Agency have the right to decide the item is not necessary or required or that the item is necessary and required and to dictate how it should be provided for.

3.4. **Time and Terms of Tax Increment Subsidy Payment.**

(A) The tax increment payments received by the Agency come from the ad valorem taxes paid by Developer to the County Treasurer. Such taxes are currently payable on or before November 30 of each year. The Agency agrees to pay the Tax Increment Subsidy to Developer within thirty days following receipt of the full amount of the Available Tax Increment by the Agency from the County. The Agency anticipates receipt of the full amount of these funds in the spring of each year from the ad valorem taxes paid by property owners, which are due the prior November 30.

(B) The Tax Increment Subsidy payments to be made by the Agency to Developer are secured solely by a pledge of the Agency of the tax increment monies received by the Agency from the Site and the Improvements constructed and installed on the Site by Developer. Developer shall have no other recourse to the Agency or the City and no recourse whatever to any other party for payment of the Tax Increment Subsidy other than the Agency's pledge.

(C) No interest shall be paid by the Agency on the Tax Increment Subsidy.

3.5. **Additional Provisions Concerning Tax Increment Subsidy.**

(A) It is understood by Developer that the Agency makes no representation to Developer, or to any other party, person or entity, that the Available Tax Increment from the Site or the Tax Increment Subsidy to be paid to

Developer pursuant to the terms of this Agreement will be an amount large enough to repay any amount Developer may be expecting to receive. The Agency has not computed, nor can it compute the exact amount of the Available Tax Increment from the Improvements to be constructed and installed by Developer on the Site.

(B) Developer understands and agrees that:

(1) Tax increment monies will become available to the Agency only if and when the Improvements to be constructed and installed by Developer on the Site are completed;
(2) The Agency is not a taxing entity under Utah law;
(3) The Agency has no power to levy a property tax on real or personal property located within the Site;
(4) The Agency has no power to set a mill levy or rate of tax levy on real or personal property;
(5) The Agency is only entitled to receive and use tax increment funds from the Site for improvements in the Project Area for the period established by law; and
(6) Developer has investigated the provisions of Utah laws governing tax funds and assumes all risk that the Redevelopment Plan and Project Area were properly adopted, and that the anticipated tax increment monies derived from the Improvements to be constructed and installed by Developer on the Site and in conformance with the Redevelopment Plan will be paid to the Agency, and if paid, that the amount of tax increment funds will be sufficient to repay the Tax Increment Subsidy obligation of the Agency, according to the terms and conditions contained in this Agreement.

(C) Developer assumes the risk that no changes or amendments will be made by the Utah State Legislature in the provisions of the Act which would affect or impair: (1) the Agency's right to receive tax increment monies and to pay the Tax Increment Subsidy obligation created by this Agreement; (2) the length of time said tax increment monies can be received by the Agency; or (3) the percentage or the amount of tax increment monies received or anticipated to be received by the Agency based upon the current statutes. The Utah State Legislature considers proposals which reduce the portion of real property taxes which the State of Utah imposes on all real and personal property within the State. Such proposals, if enacted, could materially reduce the amount of tax increment generated within the Project Area or from the Site and anticipated to be paid to the Agency. The Parties agree that such action shall likewise reduce the amount of any Tax Increment Subsidy to be paid to Developer under the terms of this Agreement.

4. **Developer Obligations.**

4.1. **Construction of Improvements.** Developer agrees that (a) the Improvements will be constructed, and all permits and approvals necessary to construct the Improvements will be obtained, at Developer's sole cost and expense, (b) the Improvements will comply with all applicable State, County and City laws, ordinances and regulations, including without limitation, applicable noise and zoning ordinances, and will be constructed in accordance with the standards set forth on the attached Exhibit C-1 and as required by the Agency and the City, (c) all on-site utility connections will be installed at Developer's expense, specifically including any special utilities, connections or rail lines required by the nature of the Improvements, (d) if necessary, Developer will relocate, at its sole cost, any existing utilities located on the Site, and (e) any roads, parking areas, curbs, gutters and sidewalks within the Site will be installed by Developer as may be necessary or required for the construction or operation of the Improvements and that the Improvements will have an Initial Investment Value of at least **$8,000,000.**

4.2. **Approval of Plans.** Prior to beginning construction and installation of any Improvements or any portion or phase of any Improvements, Developer shall provide the Agency with a general site plan of the portion of the Site on which such Improvements will be constructed, which shows a general landscaping and screening plan, together with exterior elevations for all significant structures to be constructed in connection therewith (collectively referred to as the "Proposed Plans"). Developer must obtain approval of the Proposed Plans from the Agency and the City as set forth in Exhibit C-1. The Agency's approval is in addition to any City approvals that may be required.

4.3. **Plans Submittal and Approval.** Developer shall submit each set of Proposed Plans (or any revised Proposed Plans as provided below) to the Agency as required by Exhibit C-1.

4.4. **Modifications of the Plans.**

(A) Once the Final Plans for any Improvements have been approved by the Agency and the City, permission to make changes from such Final Plans shall be requested by Developer, in writing, directed to the Agency and the City, and the Agency and the City shall reply in writing, giving approval and disapproval within the times established herein for approval of Final Plans. No change requiring Agency approval shall be undertaken until such approval has been obtained, such approval not to be unreasonably withheld, delayed or conditioned. If the Agency does not respond to the request in writing within the times established herein, then the Agency's approval shall be deemed to have been given.

(B) In the event the main roadway alignment through the Site is moved by the City, State or Federal Government for whatever reason the Developer hereby agrees that it will redesign its Development without a claim of damage against the City or Agency and that it will reconvey back to the Agency any property necessary to accommodate the new road alignment at no cost to the City or the Agency.

4.5. **Failure to Construct or Failure to Complete Improvements.** Developer acknowledges and agrees that the Agency has agreed to convey Phase I to Developer on the basis of Developer's agreement to timely construct and install the Improvements on the Site on the terms and conditions contained herein. The Site will have been removed from the market and if Developer fails to construct and install the Improvements, the Agency would suffer a loss of tax increment that cannot be recaptured. Therefore, the Parties agree that if Developer fails to construct and install the Improvements such that the Initial Investment Value of the Improvements is at least **$8,000,000**, then Developer shall receive no Tax Increment Subsidy Payments from the Agency whatsoever. Also, in the event that Developer fails to commence construction and installation of the Improvements with an Initial Investment Value of at least **$8,000,000** within three (3) years from the date of this Agreement, even if because of an Enforced Delay, or once commenced the construction and installation of the Improvements Developer ceases prior to completion for a period of one (1) year (or for a period of three (3) years if because of an Enforced Delay), then Developer must then immediately perform under (A) below.

(A) Developer shall remove any improvements that Developer may have placed on the Site (unless the Agency requests that the improvements be left in place, in which event the Agency shall accept the improvements in their "as is" condition), and Developer shall reconvey the Site to the Agency by special warranty deed, free and clear of any liens, easements or encumbrances which were not appurtenant to the Site at the time it was conveyed to Developer by the Agency, unless otherwise authorized by the Agency, free of any environmental contamination and hazardous substances which came onto the Site after the time of Developer's acquisition of the Site from the Agency, and in full compliance with all applicable federal and state environmental laws and regulations (other than noncompliance due to conditions existing at the time Developer acquired the Site). Developer agrees that upon any such reconveyance it shall thereafter defend, indemnify and hold the Agency and the City harmless from and against all claims of any kind relating to environmental contamination and hazardous substances which came onto the Site after the time of Developer's acquisition of the Site from the Agency and before reconveyance of the Site to the Agency, and for any migration thereof. If Developer reconveys the Site to the Agency, then this Agreement shall terminate, except that accrued obligations and the indemnity obligations of Developer shall survive and continue, and after such reconveyance, other

than the indemnity obligations of Developer set forth herein and obligations accrued under this Agreement prior to such reconveyance, Developer shall have no further obligations to the Agency or the City under this Agreement.

4.6. **Restriction Against Parcel Splitting Affecting Tax Increment.** During the period that the Agency is allowed under the Act to collect tax increment from the Project Area, neither Developer nor any successor in interest shall, without the prior written approval of the City and the Agency: (a) convey all or a portion of the Site or any real property acquired by Developer within the Project Area in such a way that such conveyed parcel of real property would extend outside the Project Area; or (b) construct or allow to be constructed any building or structure on the Site or on any portion of the Project Area owned by Developer in such a way that such building or structure would extend outside the Project Area. The purpose and intent of the foregoing prohibition is to avoid the = splitting or "joining" of any parcels of real property within the Project Area with one or more parcels outside the Project Area or the construction of buildings in such a way that the County Assessor or County Auditor could no longer identify, by distinct parcels, the periphery boundaries of the Project Area, or the buildings or structures included within the Project Area, and would be required to "apportion" tax increment monies between a parcel of real property or a building or structure located in part within and in part without the Project Area. The Developer shall have the right to subdivide parcels as necessary for resale subject to the applicable ordinances. In the event Developer subdivides and sells separate parcels, the Developer shall pay to the Agency at $3.00 per square foot the funds generated by the sale. In this event, such payment shall be credited against the repayment of the Purchase Price of Phase I, II or whichever is being paid back at the time of the sale. Increased value of property will be applied against increment.

4.7. **De-annexation.** Developer agrees that it will not cooperate with any person, group or municipality in any effort to remove, de-annex or disincorporate all or any portion of the Site from the municipal boundaries of the City during the period that any of the Improvements are located on the Site. Developer further agrees that it will use its best, commercially reasonable efforts to resist any efforts to remove, de-annex or disincorporate the Site in whole or in part from the City by any existing or future municipality or county so long as the Agency has any outstanding obligation to pay the Tax Increment Subsidy. If the Site is de-annexed or disincorporated in whole or in part from the City by any existing or future local municipality or county, the Agency's right to receive Tax Increment from the Site may cease, notwithstanding the provisions of this Agreement. If all right of the Agency to receive all Tax Increment from the Site ceases permanently as a result of such de-annexation or disincorporation, the Agency's obligation to pay the Tax Increment Subsidy to Developer shall automatically and immediately cease and terminate as of the date of de-annexation or disincorporation of all or any portion of the Site, without liability of the Agency or the City and without claim by Developer for further payment of the Tax Increment Subsidy.

4.8. **Reports.** While this Agreement is in effect, Developer agrees to exert its best, commercially reasonable efforts to provide the Agency with annual reports, no later than thirty (30) days after the end of each calendar year, that provide the Agency with the following information, to the extent that such information is reasonably available to Developer without undue cost or effort: (a) the total number of jobs within the Site; (b) the type of jobs and relative wages within the Site; and (c) the source of jobs within the Site, i.e., whether the jobs are "new jobs" or existing jobs that have moved to the Site, and, if the latter, the origin (inside or outside the State) of such jobs.

4.9. **No Discrimination.** Developer shall not discriminate against any person or group on any unlawful basis in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or any Improvements, including, without limitation, discrimination with respect to the selection, location, number, use or occupancy of tenants, lessees, sublessees or vendees of the Site or any Improvements.

4.10. **Enforcement of Covenants**. The provisions of this Section shall be covenants running with the land, and without regard to technical classification or designation, legal or otherwise, shall be to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by, the Agency against Developer and its successors and assigns to all or any portion of the Site or any interest therein, and any party in possession or occupancy of the Site or any part thereof. The Agency shall be deemed a beneficiary of the provisions of this Section, both for and in its own right and also for the purposes of protecting the interest of the community and other parties, public or private, in whose favor or for whose benefit these provisions have been provided. All obligations of Developer under this Section 5 shall terminate automatically on the expiration of the Payment Period and shall thereafter be of no further force and effect.

4.11. **Representations and Warranties.** Developer makes the following representations and warranties for the benefit of the Agency and the Agency's successors and assigns, which shall survive the Closing:

(A) All necessary approvals, authorizations and consents have been obtained in connection with the execution by Developer of this Agreement and all other documents to be delivered at the Closing, and with the performance by Developer of Developer's obligations under this Agreement. The execution of this Agreement by Developer, the performance by Developer of Developer's obligations under this Agreement and the purchase contemplated by this Agreement do not require the consent of any third party.

(B) The Jordan River Marketplace Developer, Jordan River Marketplace, LLC, is a Limited Liability Corporation, duly organized, validly existing and in

good standing under the laws of the State, and has been duly and validly authorized to enter into this Agreement. The person or persons executing and delivering this Agreement on behalf of Developer have been duly authorized to execute and deliver this Agreement and to take such other actions as may be necessary or appropriate to consummate the transactions contemplated by this Agreement. All requisite action has been taken to make this Agreement and all documents to be delivered by Developer at the Closing valid and binding on Developer.

5. **Payment of Taxes and Assessments.** Until the expiration of the Payment Period or the earlier termination of this Agreement, Developer shall exercise its best, reasonable efforts to pay or to cause to be paid in a timely manner all ad valorem taxes and assessments levied or imposed on the Site, any of the Improvements and any personal property on the Site; provided, however, that (a) Developer shall have the right to protest or appeal the amount of assessed taxable value levied against the Site by the County Assessor, State Tax Commission or any lawful entity authorized by law to determine the ad valorem assessment against the Site, the Improvements or any portion thereof in the same manner as any other taxpayer as provided by law, and (b) the failure of Developer to pay any such taxes or assessments on Improvements owned by Developer shall be a default by Developer under this Agreement following the expiration of the applicable notice and cure period set forth in Section 7 of this Agreement. Developer shall, however, notify the Agency in writing within ten (10) calendar days after Developer's filing of any protest or appeal to such assessment determination, and provide copies to the Agency of any protest or appeal of such assessment and information submitted as part of the protest or appeal. In addition, Developer shall give to the Agency written notice at least fifteen (15) calendar days prior to the date on which such protest or appeal is to be heard. The Agency shall have the right, without objection by Developer, to appear at the time and date of such protest or appeal and to present oral or written information or evidence in support of or objection to the amount of assessment which should or should not be assessed against the real or personal property of the Site and the amount of the Agency's Project Area indebtedness or outstanding obligations.

The Developer agrees to pay to the City all fees that will be imposed by the City on Developer in connection with the construction of the Improvements.

6. **Default; Remedies.** On the default by any Party under this Agreement, and the failure to cure such default within sixty (6) days after receipt by the defaulting Party of written notice of such default from any non-defaulting Party, or, if such default would reasonably require more than sixty (60) days to cure, the failure of such defaulting Party to commence such cure within sixty (60) days after receipt of such notice or thereafter to prosecute diligently such cure to completion, any non-defaulting Party may exercise any right or remedy at law or in equity, including, without limitation, (a) effecting the termination of this Agreement, (b) obtaining specific enforcement of this Agreement or an injunction in connection with this Agreement, or (c) receiving actual damages suffered as a result of such default.

7. **Enforced Delay.**

7.1. **Enforced Delay Defined.** As used in this Section, "**Enforced Delay**" means a delay in the performance of a Party's obligations under this Agreement due to:

(A) unforeseeable causes beyond the affected Party's control and without its fault or negligence, including, without limitation, those causes that are due to acts of God or of the public enemy, terrorism, war, acts of local, state or federal government, delays in obtaining approvals or in issuance of permits, wrongful acts of another Party, fires, floods, epidemics, accidents, failure of power, restrictive governmental laws, ordinances, regulations or requirements of general applicability, riots, civil commotion, insurrection, quarantine restrictions, strikes, lockouts, other labor troubles, freight embargoes, inability to procure or delay in obtaining labor or materials, unusually severe weather or delays of subcontractors due to such causes; or

(B) the construction or operation of the Improvements being enjoined by a court having jurisdiction.

7.2. **Effect of Enforced Delay.** The Parties agree that, in the event and to the extent of an Enforced Delay:

(A) the dates for determining Developer's eligibility for and the amounts of the Tax Increment Subsidy under this Agreement may be extended, but in no instance shall the Tax Increment Subsidy Period extend beyond the expiration of the Payment Period; and

(B) the affected Party shall not be considered in breach of or default in its obligations.

It is the intent and effect of this provision that in the event of any such Enforced Delay, the time or times for performance of the obligations of the affected Party shall be extended for the period of the Enforced Delay; provided, that in order to obtain the benefit of the provisions of this Section 8, within sixty (60) calendar days after the beginning of any such Enforced Delay, the Party seeking the benefit of this Section 8 shall have notified each other Party of such Enforced Delay in writing, stating the cause or causes for the Enforced Delay; further provided, that in any event, and notwithstanding the other provisions of this Section 8, Enforced Delays shall not extend the time for the payment of money. In the event of an Enforced Delay, the affected time schedules or deadlines shall be fairly and equitable adjusted so as to reflect the effect of the Enforced Delay.

8. **Extensions by Agency.** The Agency may in writing extend the time for Developer's performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as may be mutually agreeable to the Parties; provided, however, that any such extension or permissive curing of any particular default shall not operate to release any of Developer's obligations, nor constitute a waiver of the Agency's rights, with

respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement.

9. **Miscellaneous Provisions.**

9.1. **Conflict of Interest.** No official, employee, consultant or agent of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official, employee, consultant or agent participate in any decision relating to this Agreement that affects the personal interests of such person or the interests of any corporation, partnership or association in which such person is directly or indirectly interested.

9.2. **No Personal Liability.** No manager, member, shareholder, director, official, employee, consultant, agent or representative of any Party shall be personally liable to the other Parties or any successor in interest in the event of any default or breach by the first Party for any amount that may become due to the other Parties or their respective successor or on any obligations under the terms of this Agreement.

9.3. **Notices.** A notice or communication given under this Agreement by any Party to another Party shall be sufficiently given or delivered if given in writing by personal service, express mail, FedEx, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified, return receipt requested and addressed to such other Party as follows:

(A) In the case of a notice or communication to the Agency:

Executive Director
Redevelopment Agency of West Valley City
3600 Constitution Boulevard
West Valley City, Utah 84119-3027

with a copy to:

West Valley City Attorney
Attorney for the Redevelopment Agency of West Valley City
3600 Constitution Boulevard
West Valley City, Utah 84119-3027

(B) In the case of a notice or communication to the City:

Mayor
West Valley City
3600 Constitution Boulevard
West Valley City, Utah 84119-3027

with a copy to:

West Valley City Attorney
3600 Constitution Boulevard
West Valley City, Utah 84119-3027

(C) In the case of a notice or communication to Developer:

Jordan River Marketplace, LLC
25 South Main Street, Suite 200
Centerville, Utah 83014

(D) Notice to any Party may be addressed in such other commercially reasonable way that such Party may, from time to time, designate in writing and deliver to the other Parties as set forth in this Section 12.3.

9.4. **Exhibits/Recitals.** All Exhibits to this Agreement and all Recitals are incorporated in this Agreement and made a part of this Agreement as if set forth in full, and are binding upon the Parties to this Agreement.

9.5. **Headings.** Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

9.6. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

9.7. **Attorneys' Fees.** In the event of a default under this Agreement, the defaulting Party agrees to pay all costs incurred by any other Party in enforcing this Agreement, including reasonable attorneys' fees, whether by in-house counsel or outside counsel and whether incurred through initiation of legal proceedings or otherwise.

9.8. **Governing Law.** This Agreement shall be interpreted and enforced according to the laws of the State.

9.9. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.10. **Time.** Time is of the essence of this Agreement.

9.11. **Complete Agreement.** This Agreement and its exhibits contain the complete agreement of the Parties, and supersede all prior and contemporaneous negotiations, representations and agreements of the Parties with respect to the

subject matter hereof. This Agreement may be amended or modified only in writing, executed by both Parties.

9.12. **No Recording.** Except as expressly, neither this Agreement nor any notice or memorandum of this Agreement may be recorded in the official records of the County.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement, on or as of the date first above written.

THE AGENCY:

REDEVELOPMENT AGENCY OF
WEST VALLEY CITY

By: _____
Wayne T. Pyle
Chief Executive Officer

ATTEST:

_____
Sheri McKendrick, Secretary

Approved as to form:

_____
Nicole Cottle, Esq.,
Redevelopment Agency Legal Counsel

THE CITY:

WEST VALLEY CITY

By: _____
Dennis J. Nordfelt, Mayor

ATTEST:

_____
Sheri McKendrick, City Recorder

Approved as to form:

_____
J. Richard Catten, Esq.,
West Valley City Attorney

NC:KD: ID 2195 Jordan River Marketplace ADL.doc
050509

DEVELOPER:

By: _____

Its: _____

State of _____)
:ss
County of _____)

On this _____ day of _____, 2009, personally appeared before me _____ *[name of person(s)]*, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he/she is the _____ *[title],* of **Jordan River Marketplace, LLC**, limited liability company, by authority of its members or its articles of organization, and he/she acknowledged to me that said limited liability company executed the same.

_____
Notary Public

EXHIBIT A

Site Legal Description

The Site referred to in the foregoing instrument is located in Salt Lake County, Utah, and is described as follows:

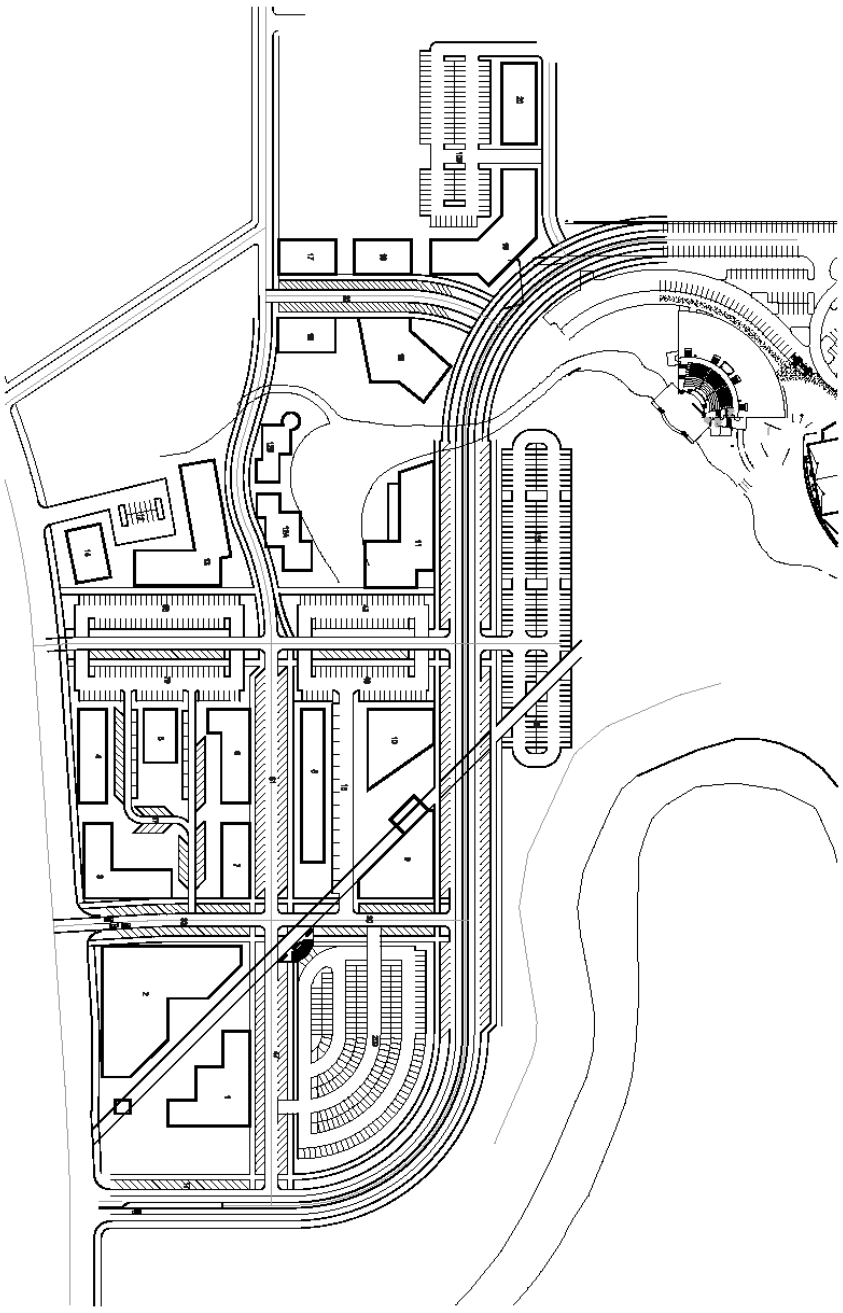

EXHIBIT B

Zoning Overlay and Development Standards

EXHIBIT C

Design and Construction Guideline Process

I. The Standard City Process is detailed in the applicable ordinances. In addition to the Ordinance requirements, the Developer agrees to the following process.

II. Architectural Control Committee
   i. The City and the Agency shall set up an Architectural Control Committee which shall review all architectural design and proposal prior to such design going through the standard City process and shall make recommendations to the Agency and the City Council prior to their consideration.
   ii. In addition to the standard processes of the City, no building permit shall be issued until the Committee has signed off on the plans for any building or structure.

III. Developer Participation
   i. The Developer agrees to fully participate in the Design process and to provide all engineering, design and architectural services to facilitate the City and Agency review.
   ii. The Developer agrees to comply with all ordinances and recommendations of the Committee regarding development of the Project.

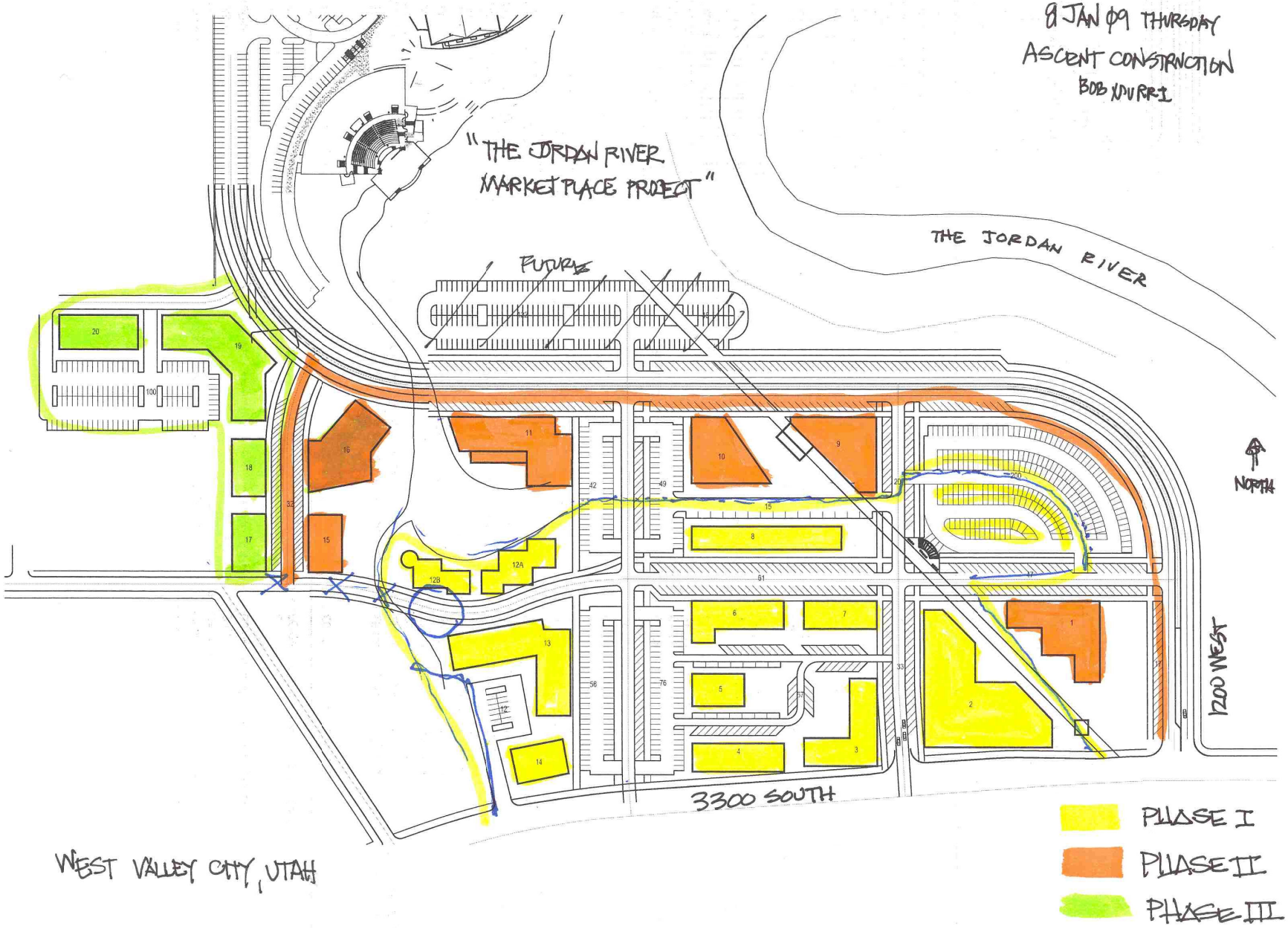
8 JAN 09 THURSDAY
ASCENT CONSTRUCTION
BOB MURRI
"THE JORDAN RIVER
MARKET PLACE PROJECT"
THE JORDAN RIVER
FUTURE
NORTH
1200 WEST
3300 SOUTH
WEST VALLEY CITY, UTAH
PHASE I
PHASE II
PHASE III

Exhibit C-2

Exhibit C-3

EXHIBIT D

Preliminary Site Plan

(See Attached)

EXHIBIT E

Appraisals

EXHIBIT F

Tax Increment Payment Schedule